UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 3:17-cr-00066
v.	)	Chief Judge Crenshaw
	)	
CASON MORELAND	)	

UNITED STATES' SENTENCING MEMORANDUM

The United States respectfully submits this memorandum in connection with the sentencing hearing for defendant Cason Moreland, currently scheduled for November 30, 2018. For more than twenty years, Moreland was a judge on the General Sessions Court of Metropolitan Nashville and Davidson County. In that role, he took an oath to serve the public by administering justice fairly and impartially. He violated that oath, however, and abused his position of power to enrich himself and give special treatment to others. Then, when the FBI began investigating his abuses of power, he engaged in repeated, systematic efforts to obstruct justice, which continued even after he was under federal indictment.

Any time an elected public official abuses his office for personal gain, it "cannot properly be seen as a victimless crime, for in a sense it threatens the foundation of democratic government" and "tears at the general belief of the citizenry that government officials will carry out their duties honestly, if not always competently." *United States v. Hayes*, 762 F.3d 1300, 1309 (11th Cir. 2014). And any time an individual attempts to destroy evidence or tamper with witnesses while under investigation, it strikes at the heart of our system of justice. *See United States v. Calvert*, 511 F.3d 1237, 1241 (9th Cir. 2008). Thus, when a case involves repeated acts of corruption and

obstruction, undertaken by a person who is supposed to embody the very principles of fairness and probity upon which our system relies, it presents a matter of exceptional importance and gravity. As set forth below, the Court should impose a sentence that reflects the exceptional nature of this offense—namely, an above-guidelines sentence of 60 months' imprisonment.

BACKGROUND

I. Introduction and Applicable Law

Moreland was arrested on a complaint in March of 2017, and formally charged a month later in a five-count indictment. (DE# 1, Complaint; DE# 14, Indictment.) In March of 2018, Moreland was charged in a nine-count superseding indictment. (DE# 56, Superseding Indictment.) Two months later, Moreland pleaded guilty to five counts of the superseding indictment: Count Two, charging obstruction of an official proceeding; Count Four, charging conspiracy to retaliate against a witness, victim, or informant; Count Six, charging conspiracy to commit theft, embezzlement, or conversion of over $5,000 in funds from an organization receiving over $10,000 in federal benefits; Count Eight, charging destruction of records or documents with the intent to obstruct a federal investigation; and Count Nine, charging tampering with a witness by corrupt persuasion. (DE# 61, Minute Entry; DE# 63, Plea Agreement.)

The criminal acts that underlie the counts of conviction also drive the calculation of the advisory guideline range. Those acts have been described in detail in the superseding indictment, plea agreement, and Presentencing Investigation Report ("PSR"), and they will be discussed briefly below. For purposes of sentencing, however, it is important to understand how the crimes of conviction fit into a broader pattern of improper and illegal conduct, spanning several years.

As a legal matter, it is perfectly appropriate for the Court to consider such conduct at sentencing—even when it does not qualify as offense conduct or "relevant conduct" within the meaning of U.S.S.G. §1B1.3—so long as it has "sufficient indicia of reliability to support its probable accuracy." U.S.S.G. §6A1.3(a). Indeed, doing so is necessary to gain a full appreciation of "the nature and circumstances of the offense and the history and characteristics of the offender." 18 U.S.C. § 3553(a)(1). "'It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.'" *Pepper v. United States*, 562 U.S. 476, 487 (2011) (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)). The Supreme Court has therefore "emphasized that '[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.'" *Id.* at 488 (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)). "Permitting sentencing courts to consider the widest possible breadth of information about a defendant 'ensures that the punishment will suit not merely the offense but the individual defendant.'" *Id.* (quoting *Wasman v. United States*, 468 U.S. 559, 564 (1984)).

This principle has been codified by statute and reiterated by the U.S. Sentencing Commission. *See* 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."); U.S.S.G. §1B1.4 ("In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any

information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law."). "Both Congress and the Sentencing Commission thus expressly preserved the traditional discretion of sentencing courts to 'conduct an inquiry broad in scope, largely unlimited either as to the kind of information [they] may consider, or the source from which it may come.'" *Pepper*, 562 U.S. at 489 (quoting *United States v. Tucker*, 404 U.S. 443, 446 (1972)).

II. Offense Conduct, Relevant Conduct, and Other Information Relevant to Sentencing.

With that legal backdrop in mind, there are six areas that warrant the Court's attention in determining the appropriate sentence in this case. The first area relates to Moreland's relationships with two different women, and particularly the evidence indicating that he took judicial action favorable to them in exchange for, or at least in the hope of, sexual favors in return. The second area relates to Moreland's attempts to obstruct the federal investigation into those relationships. The third area relates to Moreland's theft or embezzlement of cash from the Davidson County Drug Court Foundation. The fourth area relates to various efforts that Moreland made to obstruct the federal investigation into that theft or embezzlement, first by ordering the destruction of important documents, and later (after having been indicted on federal obstruction charges) attempting to tamper with another witness before she testified in the grand jury. The fifth area relates to Moreland's efforts to provide improper favorable treatment to parties in General Sessions Court with whom he had personal relationships, including his future son-in-law. And the sixth area relates to a series of trips that Moreland took to Costa Rica with friends—including attorneys who practiced before him—in which they engaged in illegal and immoral conduct.

A. Moreland's Relationship with Person 1 and Person 2[1]

The federal investigation into Moreland began in late January 2017, when a woman—referred to thus far in court filings as Person 1—told both the FBI and the media that she had engaged in a sexual relationship with Moreland, who in turn had provided her with favorable treatment in court proceedings. Before discussing Moreland's relationship with Person 1, however, it is worth focusing on Moreland's earlier relationship with another woman, referred to in court filings as Person 2. Although Person 2 died before the investigation began, reliable information gathered during the investigation reveals the following.

On June 10, 2013, Person 2 was pulled over for running a red light. According to the arresting officer, Person 2 seemed to be drunk, and was driving on a revoked license. After she failed field sobriety tests and refused to consent to further testing, she was arrested and charged with DUI (second), driving on a revoked or suspended license, and violating the implied consent laws. Person 2 had been arrested for DUI on at least two prior occasions, resulting in a conviction for reckless driving in 2009 and for DUI in 2012. Given that record, she was facing a minimum of 45 days in jail if convicted of another DUI. *See* T.C.A. § 55-10-402(a)(2)(A).

Shortly after her arrest, Person 2 called her attorney, who told her that she had gotten herself into big trouble and would now need to do something equally big to get herself out of it. Specifically, he told her that he was currently on vacation with a judge in Dauphin Island, Alabama

[1] Moreland's relationship with Person 1 and Person 2 is described in PSR paragraphs 23-30 and 81-82 and forms the backdrop for his convictions on Counts Two and Four. For the Court's convenience, the government will file a separate sealed exhibit giving the name (and a brief description) of each individual referred to by pseudonym in this memorandum.

and that she would need to come join them and sleep with the judge in order to get herself out of trouble. That judge was Casey Moreland, who was close friends with Person 2's attorney.

Person 2 then traveled to Dauphin Island, where—according to other people in attendance on the trip—she and Moreland behaved as though they were a couple, including by sleeping in the same bedroom. Person 2 later told several friends that she did in fact have sexual relations with Moreland, although it is not entirely clear from their accounts whether Person 2 said that she had sexual relations with Moreland while in Dauphin Island, or instead back at his office in Nashville, or both. For example, Person 1 has said that Person 2 told her that she had sexual relations with Moreland both in Dauphin Island and then again in his judicial chambers. Because Person 2 died before this investigation began, agents could not speak with Person 2 directly. Nevertheless, her statements to friends were corroborated in part by statements from Moreland's judicial assistant, who said that she remembers an afternoon in roughly the summer of 2013 when Person 2 came to Moreland's office, after courtroom proceedings had ended for the day. According to Moreland's judicial assistant, once Person 2 arrived, Moreland told the judicial assistant that she should go home early, leaving Moreland and Person 2 alone in his office. The judicial assistant also saw Moreland looking at a nude photograph of Person 2 on a friend's phone at a later date.

Court records also show that Person 2's case was originally assigned to a different judge, but was transferred a couple of weeks later to Moreland's docket. On November 25, 2013, however, Person 2's case was resolved in front of a different judge. That judge told agents that the case was transferred to him when Moreland approached him and said that he needed to recuse himself because of an unspecified conflict. The resolution of Person 2's case included a plea deal—which had been worked out with Moreland's approval before the case was transferred to the new

judge—in which Person 2 pleaded guilty to reckless driving, instead of a second DUI, thereby avoiding a mandatory 45-day jail sentence. Person 2 was also convicted at trial of the implied-consent violation and driving on a revoked license. The new judge sentenced Person 2 to six months' imprisonment, with all but five days suspended—meaning that Person 2 was supposed to spend five days in jail, as Tennessee law required when a defendant has a second implied-consent violation. Court records reflect, however, that Person 2 never served her jail sentence. Moreover, records reflect that—despite recusing himself from Person 2's case—Moreland terminated Person 2's probation early, in March 2014. The new judge told agents that he was unaware of Moreland's subsequent intervention in the case, and unaware of the fact that Person 2 never served her sentence, until 2017, when allegations of Moreland's relationship with Person 2 became public.

When those allegations did become public, and became the subject of an FBI investigation, Moreland took steps to disguise his relationship with Person 2. For example, Moreland gave a statement to the Nashville Scene in which he said, "I fully reject and deny any personal relationship with [Person 2] whatsoever." He also said, "At no time did I intervene on [Person 1 or Person 2's] behalf during or after judgments were rendered by the appropriate courts." Given that Moreland traveled, and shared a bedroom, with Person 2 in June 2013, the first statement was false. And given that court records bearing Moreland's signature show his intervention on Person 2's behalf after judgment was entered, the second statement was also false. Likewise, during the course of the federal investigation, Moreland was served with a grand jury subpoena seeking documentation of trips he had taken with certain individuals, including Person 2 and others who were present for the June 2013 trip to Dauphin Island. Moreland responded to the grand jury subpoena by producing

a detailed list of trips, while conspicuously omitting any reference to the June 2013 Dauphin Island trip.

In sum, Person 2 told several friends that she provided sexual favors to Moreland in order to avoid a second DUI conviction. While Person 2's death makes it difficult to prove these allegations beyond a reasonable doubt at trial, under the Federal Rules of Evidence, they have "sufficient indicia of reliability to support [their] probable accuracy." U.S.S.G. §6A1.3(a); *see also United States v. Alsante*, 812 F.3d 544, 547 (6th Cir. 2016). These indicia of reliability include (1) the fact that witnesses place Moreland and Person 2 together, and sleeping in the same room, in Dauphin Island immediately following an arrest for what could have been Person 2's second DUI conviction; (2) the fact that Moreland's judicial assistant saw Person 2 come to Moreland's office, at which point Moreland asked his judicial assistant to leave the two of them alone; (3) the fact that Moreland oversaw a favorable plea deal for Person 2 that avoided a conviction for a second DUI (and the 45-day jail sentence it would entail), and then intervened behind the scenes after her conviction to ensure that she never served her five-day jail sentence and that her probation was terminated early; and (4) the fact that Moreland took steps to hide his relationship with Person 2, by giving false statements to local media and omitting information about the 2013 Dauphin Island trip from his response to a grand jury subpoena.

In light of these facts, the Court should find that, even if Moreland never consummated a sexual relationship with Person 2, he at least took steps to provide her with favorable treatment after she demonstrated a willingness to sleep with him. As discussed below, that finding is relevant to an assessment of the appropriate sentence in this case under § 3553(a), even if it does not affect the applicable guideline range.

The relationship between Moreland and Person 2 also provides the backdrop for understanding Moreland's relationship with Person 1, since it was Person 2 who introduced the two of them, on July 9, 2015. Person 2 set up the meeting after hearing Person 1 complain that she was having a hard time paying off accumulated court costs and fines after getting her own DUI conviction. According to Person 1, Person 2 introduced her to Moreland at a local restaurant and then excused herself to take a phone call. In the conversation that followed, Person 1 explained to Moreland that she was trying to figure out how to get additional time to pay off her court costs and fines. According to Person 1, she told Moreland that she had recently gotten a promotion at work and intended to pay off all her costs and fines but just needed an extension of the deadline to do so. Instead, Moreland told her that he would make sure those costs and fines were waived entirely.

As the meeting ended, Person 2 rejoined them and they all stepped outside the restaurant together. Person 1 overheard Moreland tell Person 2 that he thought Person 1 was "a hot little thing," and he asked Person 2 to "put in a good word for [him]" with Person 1. After Moreland left, Person 1 told Person 2 that Moreland had said that he would waive her costs and fines entirely. Person 2 responded by telling Person 1 not to sleep with Moreland. Person 1 was initially confused by this response. Later that day, however, Person 2 told Person 1 about her own experience traveling to Dauphin Island after getting arrested for DUI, and sleeping with Moreland in order to avoid what she described as "serious jail time." Person 2 also told Person 1 that Moreland was "going to expect something from" her because "he doesn't just do favors for free."

After their meeting on July 9, 2015, Person 1 sent Moreland additional details about the cases for which she had outstanding costs and fines. On July 14, 2015, Moreland sent a text message to Person 1 stating, "Your fees; fines and court costs are taken care of! You now officially

owe me !! Haha." Person 1 responded, "I cannot thank you enough! ! ! And yes I definitely owe you!" In light of her recent conversation with Person 2, Person 1 interpreted Moreland's text message as an attempt to get sexual favors in return for special treatment.

Over the next several months, Person 1 and Moreland had little communication. In November 2015, they began corresponding more regularly via text message, with Moreland often sending flirtatious, and occasionally sexually explicit, texts asking Person 1 if she wanted to meet for drinks. They finally met for lunch on November 30, 2015, at which point Person 1 asked for Moreland's assistance in getting some outstanding tickets resolved and getting the Interlock device (which had been installed after her DUI) removed from her car. After lunch, Person 1 texted Moreland to say, "Seriously thank you. Even if I have to pay it all I still appreciate your even taking the time to try!!" He responded, "Your welcome. I hope I can help."

Over the next month, Person 1 and Moreland continued to talk about the possibility of him helping her with her legal problems. Those discussions were often juxtaposed with his attempts to start a sexual relationship with her. For example, on December 28, 2015, Person 1 told Moreland that she had finally sent him her insurance information, as he had requested. She also added that she was just coming out of "a super intense holiday season," noting, "Yesterday I sat on my couch and did nothing all day. It was glorious." Moreland responded, "I bet so! Let me know when your ready for more company on that couch." Later in that same conversation, after Moreland asked Person 1 what she was doing the rest of the week, she noted that she and her sister were feuding and that she was currently on the "way to the stupid interlock place to get my thing serviced." Moreland sent two responses in rapid succession: "Maybe you should hook up with me and your sister!!" and "We need to get that thing off your car." When Person 1 indicated that a sexual

relationship involving both her and her sister would never happen, Moreland asked, "She wouldn't do it or you wouldn't do it?" When Person 1 responded that her sister would not do it, he asked, "But you would????? Lol." As they continued to discuss the possibility of three-way sexual relationship, Person 1 wrote, "So I'm at the interlock place and they said if you sign a separate release saying I've fulfilled the interlock requirement then I can get this out of my car immediately." Moreland responded, "Bring me what I need to sign!! I will sign it today."

Once it became clear that Moreland would need to put the release on official court letterhead, he said that he would have to go into his office the following day to type it up, adding, "This overtime work may really cost ya." When Person 1 responded that she was "prepared for the overtime bill," he replied, "Hahaha no bill!!" Person 1 then offered to join him at the office to "play secretary," and Moreland responded, "You sure you want to play secretary!???? That could put you in a spot ! [. . . .] I expect a lot from my employees !" Although they agreed to meet in his office the following morning, Person 1 ultimately did not show up. Moreland sent her the letter, which was written on official court letterhead, but expressed disappointment that she had not arrived, saying, "I took a shower and everything and you didn't show !" They ultimately met up later that morning so that Moreland could give her the letter, but they did not begin a physical relationship at that time.

Over the next few months, Moreland continued to ask Person 1 if she would meet up with him. For example, on January 20, 2016, Moreland invited Person 1 to come out to his home, saying, "If you can über out here I will take you back to work tomorrow[.] I will pay for über." Person 1 generally deflected these requests. On March 31, 2016, however, she reached out to Moreland seeking his help in trying to figure out if her electronic devices had been hacked or

bugged by her ex-husband. He agreed to help. The next day, she met him at a local bar; that afternoon they began their sexual relationship, which continued on and off for the rest of 2016.[2]

During that time, Moreland took additional actions to benefit Person 1. For example, on June 16, 2016, Person 1 was pulled over while driving to meet Moreland at a bar. Person 1 notified Moreland of the traffic stop while it was underway. After asking her for the officer's name, Moreland called the officer's supervisor and told him that Person 1 was en route to his office on official business. The supervisor intervened and spoke to the officer, who then declined to issue Person 1 a ticket for driving on a revoked license. Person 1 then drove to the bar and met Moreland. Soon thereafter, they went to Moreland's office, where they had sexual relations. Afterward, Moreland gave Person 1 some cash from an envelope in his desk, telling her to use it to pay off traffic tickets from other counties and get her driver's license reinstated. A few days later, Person 1 expressed gratitude for the money and for his intervention, and Moreland responded that he had "[j]ust used [his] super powers," which was a term that he and Person 1 often used jokingly to refer to his judicial authority. He noted that her super powers were not "to[o] bad either," adding, "My desk still has butt marks on it!!" In a similar vein, in November 2016, Moreland placed some of Person 1's outstanding traffic tickets on his docket without subpoenaing the issuing officers. When the officers predictably failed to show up for court, the effect was that the fines were waived or retired.

In sum, there is no doubt that Moreland had a long-term sexual relationship with Person 1 and took several official acts to benefit her. Whether or not the sexual favors and the official acts

[2] In late April 2016, Moreland and Person 1 traveled to Dauphin Island with Person 2 and several others. It was shortly after that trip that Person 2 died.

were connected by a corrupt quid pro quo is perhaps debatable.[3] And while the resolution of that question would matter if Moreland were charged with honest services wire fraud, *see, e.g.*, *United States v. Terry*, 707 F.3d 607, 612-13 (6th Cir. 2013), it is ultimately unnecessary for the Court to resolve that question here. For purposes of § 3553(a), it suffices for the Court simply to rely on what is undisputed: namely, that Moreland repeatedly used the powers of his office to grant improper favorable treatment to a woman with whom he was first trying to have, and later was having, a sexual relationship.

B. Moreland's Attempts to Obstruct the Federal Investigation Into His Relationship with Person 1 and Person 2[4]

On January 25, 2017, the FBI opened an investigation into whether Moreland had unlawfully used his official position as a judge to provide favorable treatment to Person 1 and Person 2. Moreland became aware of this federal investigation no later than February 1, 2017, when FBI agents attempted to interview him at his office. After learning of the investigation, Moreland concocted two related schemes to obstruct it. First, he attempted to pay Person 1 to sign a false affidavit recanting the allegations she had made against him. Second, he tried to arrange to have drugs planted in Person 1's car and then to have her pulled over by law enforcement, with the hope that the resulting arrest would destroy her credibility as an accuser.

To carry out both of these schemes, Moreland enlisted the help of an old acquaintance, who is referred to in court filings as J.P. Moreland met with J.P. on or about March 1, 2017, and said

[3] Person 1 initially told local media that she did not see her relationship with Moreland as part of a quid pro quo. She later provided a sworn statement, however, saying that she *did* view their relationship as part of a quid pro quo.

[4] Moreland's obstructive conduct in this area is described in PSR paragraphs 20-22 and 31-49, and underlies the convictions on Counts Two and Four.

that he feared he could lose his job as a judge and face criminal charges as a result of Person 1's allegations. Moreland asked for J.P.'s help in carrying out his two schemes, and J.P. agreed. The following day, Moreland told J.P. that he was worried that his phone calls were being monitored, and consequently instructed J.P. to buy him a "burner" phone registered in a fake name. J.P. did so, and Moreland began using a burner phone registered in the name of "Raul Rodriguez."

At Moreland's direction, J.P. reached out to a mutual friend that he shared with Person 1 and asked that friend—who is identified in court filings as Person 3—to tell Person 1 that she could make thousands of dollars by signing an affidavit. Soon thereafter, J.P. began cooperating with the FBI's investigation and agreed to record his meetings and phone calls with Moreland. On March 11, 2017, Moreland gave J.P. an affidavit written as though it was from Person 1, along with $5,100 in cash that he could use to get Person 1 to sign it. He told J.P. that the affidavit "gets me out of trouble" and that he should get Person 1 "liquored up real good before" bringing up the idea of having her sign it. Later that night, J.P. called Moreland and told him (at the FBI's direction) that Person 1 wanted to cross out certain sections of the affidavit that were untrue. Moreland initially responded that the affidavit has "got to be the truth," but added that "it's got to help me. If she's marking everything out and it's not helping me—." Moreland asked J.P. how much money Person 1 wanted to sign the affidavit. After hearing that she wanted "half," Moreland pointed out, "Well, but she's going to have to do something to help me for it." J.P. then told Moreland that Person 1 would sign the affidavit "as-is"—including the portions that she had identified as false—for an extra $1,000. Moreland agreed, and provided J.P. with the extra cash later that night, while taking back the affidavit, which he believed had been signed by Person 1.

Moreland also sent J.P. information about Person 1's license plate number, and asked him to try to track down her car as part of the scheme to plant drugs on her. On March 16, 2017, J.P. (again acting at the FBI's direction) told Moreland that he had spoken to a law enforcement officer about planting drugs in Person 1's car, with the law enforcement officer supposedly agreeing that it "wouldn't look good [for Person 1] at all."[5] Moreland asked J.P., "What's he want?", referring to what the officer wanted to help plant the drugs. Moreland also asked whether the officer would "be the one to pull her over" and whether he had "a dog," referring to a drug-sniffing dog. Moreland asked whether J.P. had found Person 1's car—J.P. replied that he had not—and stated that the tag number he had given J.P. several days before should be enough to find it.

In sum, after Moreland learned that he was under federal investigation, he devised two separate schemes to obstruct that investigation. One scheme involved paying a witness to sign a false affidavit. The other involved planting evidence on an innocent person in order to convict her of a crime she did not commit. Both demonstrated a clear willingness to sacrifice the truth-seeking function of the justice system in favor of self-preservation.

C. Moreland's Theft or Embezzlement of Cash[6]

One of Moreland's duties as a judge was to preside over the General Sessions Drug Treatment Court, a specialized court program designed to provide alternatives to incarceration for certain defendants. The work of the Drug Treatment Court was supported by a nonprofit entity

[5] To be clear, J.P. never spoke to an actual law enforcement officer about planting drugs on Person 1. J.P.'s suggestion to Moreland that the law enforcement officer might be willing to participate in Moreland's drug-planting scheme was entirely a ruse.

[6] Moreland's theft or embezzlement of cash is described in PSR paragraphs 50-62 and underlies the conviction on Count Six.

called the Davidson County Drug Court Foundation.[7] Although Moreland had no formal role with the Drug Court Foundation, he exercised significant de facto control over its operations.

The Drug Court Foundation operated an outpatient treatment facility called the Court Foundation Center. Most of the clients at the Court Foundation Center were participants in the Drug Treatment Court program, and their services were generally paid for by the Tennessee Department of Mental Health & Substance Abuse Services ("TDMHSAS"). The Court Foundation Center also provided treatment to certain people who were not participants in the Drug Treatment Court program, including individuals who sought treatment in order to reduce their jail time for DUI and other offenses. These individuals typically paid for treatment out of their own pockets, via cash or money order, and were referred to at the Court Foundation Center as "self-pay clients."

The director of the Court Foundation Center was a woman who has been referred to in Court filings as N.C. N.C. regarded Moreland as her boss and as the ultimate decision maker, and he determined her compensation structure. Under that compensation structure, N.C. was required to cap the total amount billed each month from the Court Foundation Center to the Drug Court Foundation at no more than 50% of what the Drug Court Foundation had billed to TDMHSAS. Moreland acknowledged that this billing arrangement would result in N.C. being underpaid for the time she spent working at the Court Foundation Center, so he told her that she could also keep for herself all of the money she collected from the self-pay clients.

By early 2016, the number of self-pay clients who received counseling at the Court Foundation Center had increased, to the point that N.C. began to feel uneasy about the

[7] In the one-year period beginning December 22, 2016, the Drug Court Foundation received benefits in excess of $10,000 from the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration.

arrangement. In the spring of 2016, N.C. talked to Moreland about her unease and told him that she would prefer to deposit all of the money from self-pay clients into the Drug Court Foundation's bank account, while at the same time either becoming a salaried employee or being allowed to bill the Drug Court Foundation for the entirety of her work at the Court Foundation Center. In response, Moreland told N.C. that if she felt uneasy about the money she was keeping, she should start giving him half of it. Moreland also told N.C. that he would work on increasing her compensation.

N.C. agreed with Moreland's plan, and began taking an envelope full of cash—containing half of the money she had collected from self-pay clients that month—to Moreland's office once a month. N.C. typically placed the envelope on Moreland's desk while he was in court or elsewhere. In the fall of 2016, N.C. reiterated to Moreland that she felt uneasy about keeping half of the money she collected from self-pay clients. Moreland responded that N.C. should start giving him *all* of the money that she collected from self-pay clients each month, and, in return, she could begin billing the Drug Court Foundation for all of her work at the Court Foundation Center. N.C. agreed with this plan and began providing Moreland with a monthly envelope containing all of the money she had collected that month from self-pay clients. This arrangement continued up until the time that Moreland became aware of the FBI investigation. In total, between the spring of 2016 and January 2017, N.C. collected from self-pay clients, and either retained for herself or provided to Moreland, over $15,000 in funds that were stolen or embezzled from the Drug Court Foundation.

Moreland used some of these stolen funds to carry out his criminal activity with Person 1. As noted above, after Moreland and Person 1 had sexual relations in his office in June 2016, he pulled an envelope full of cash from his desk and gave her money to pay off her tickets from other counties. It would appear that this envelope contained the very cash that N.C. had collected from

self-pay clients and delivered to Moreland. Later, when Moreland became aware of the FBI's investigation, he asked N.C. to temporarily hold onto his money and store it in a lockbox. On March 3, 2017, Moreland called N.C. from the "Raul Rodriguez" burner phone and asked her to bring the money that she was storing in the lockbox out to his sister's house, where he was staying at the time. N.C. brought him roughly $6,000. It would appear that this was the very money Moreland gave to J.P. in the belief that it was being used to pay Person 1 to recant her allegations against him. In addition to the embezzlement and theft, Moreland also used the Drug Court Foundation's bank account to pay for some of his own personal expenses, including numerous occasions when he sent flowers to friends and family members and then paid the expenses with Drug Court Foundation funds.

D. Moreland's Attempts to Obstruct the Federal Investigation Into His Theft or Embezzlement of Cash[8]

As noted, FBI agents visited Moreland in his office on or about February 1, 2017. As it turned out, N.C. was present in his office that day as well. Roughly two weeks later, Moreland asked N.C. to meet with him in the judges' area of the parking garage at the courthouse. There, Moreland told N.C. to destroy any records or documents at the Court Foundation Center that could show the amount of cash being collected from self-pay clients. N.C. agreed to do so, and destroyed the receipt book and attendance log from the Court Foundation Center.

As the investigation continued, Moreland and N.C. periodically talked and met for lunch. These communications continued even after Moreland was arrested in March 2017 on federal obstruction charges. At the detention hearing that followed, Magistrate Judge Brown noted that

[8] Moreland's obstructive conduct in this area is described in PSR paragraphs 63-78 and underlies the convictions on Counts Eight and Nine.

the question of detention was a "close" one, but ultimately elected to release Moreland subject to conditions, including the "critical" condition that Moreland "[a]void all contact directly or indirectly with any" potential witnesses in this case. (DE# 18, Transcript, PageID#: 182.)

Not only did Moreland ignore that condition and continue to have contact with N.C., he went much further, by trying to tamper with her as a witness. Indeed, after Moreland learned that N.C. had received a federal grand jury subpoena, he met or spoke with her several times between February 9 and February 13, 2018 about her discussions with the FBI and her upcoming grand jury testimony. After learning that she had been asked by the FBI (and would be asked in the grand jury) about money and records relating to self-pay clients, Moreland: (1) presented N.C. with numerous false cover stories about what had happened to the money collected from the self-pay clients; (2) presented N.C. with numerous false cover stories about what had happened to the receipt books that N.C. had destroyed at his direction; and (3) assured N.C. that no one else knew about the money that she had given him, and that the only way the information would come to light, and thus the only way that she could potentially get in trouble, was if she chose to disclose it. In doing so, Moreland sought to persuade N.C. to present false testimony to, or withhold truthful testimony from, the federal grand jury.

E. Moreland's Efforts to Provide Improper Favorable Treatment to Litigants[9]

As noted above, Moreland used his authority as a judge to provide special treatment to certain people who appeared in General Sessions Court, including Person 1 and Person 2. Another flagrant case of improper favoritism also bears mention, however, and that is the case of Moreland's future son-in-law, referred to here as Person 4.

[9] Moreland's conduct in this area is described in PSR paragraphs 83-85.

On October 30, 2015, Person 4 was arrested for DUI after driving the wrong way down Interstate 40. On March 3, 2016, he appeared for a hearing in Moreland's courtroom. At the time, Person 4 was dating Moreland's daughter. When Person 4 arrived at the courthouse, Moreland arranged for him to come to his office via the judges' elevator. Although Person 4 had a prior conviction for DUI, he pleaded guilty that day to reckless driving, with an agreed sentence of 10 days of jail time, 11 months and 29 days of probation, a $350 fine, an alcohol safety course, an Interlock device, and 60 hours of community service. Moreland arranged for another judge to take the guilty plea, without telling the judge of the relevant circumstances.

After the plea was accepted and the sentence was imposed, Moreland took steps behind the scenes to thwart the agreed-upon penalties. For example, on April 1, 2016, Moreland had a clerk email the Davidson County Sheriff's Office, stating, "Please recall the committal on [Person 4.] He is Time Served per Judge Moreland." As a result, Person 4 did not spend 10 days in jail, as required by the sentence. Likewise, on September 13, 2016, Moreland caused another judge to sign an order declaring Person 4 to be indigent, even though Person 4 was in fact making over $40,000 a year. This order had the effect of relieving Person 4 of paying his fines and court costs. Finally, Person 4 told his Probation Officer that Moreland had advised him that he did not have to complete his community service because he was working more than 60 hours a week. In fact, Person 4 was not working more than 60 hours a week at that time. Nevertheless, the Probation Officer terminated the requirement of community service.

In sum, Person 4 got arrested for conduct that should have resulted in significant punishment. But because of Person 4's personal connection to Moreland, Moreland ensured that

Person 4 received special treatment—including the secret unwinding of nearly all the penalties set out in his plea agreement.

F. Moreland's Trips Abroad[10]

Beginning in 2012 and continuing until the launch of the federal investigation, Moreland regularly traveled to Costa Rica with others, including several attorneys who appeared before him in General Sessions Court. On these trips, the attendees regularly hired local prostitutes and sometimes smoked, or otherwise ingested, marijuana. As such, all of the attendees possessed compromising information on Moreland, as he did on them. Moreland nevertheless allowed these attorneys to continue practicing in front of him. Not only did this violate the Tennessee Code of Judicial Conduct,[11] it helped foster an atmosphere of cronyism and favoritism in Moreland's courtroom. In this old-boys-club environment, Moreland and those close to him were exempt from the rules that governed the conduct of everyone else.

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[10] Moreland's conduct in this area is described in PSR paragraph 80.

[11] *See, e.g.*, Tenn. Sup. Ct. R. 10, Preamble ("Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence."); *id.* at RJC 1.2 cmt. 1 ("Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge."); *id.* at RJC 1.2 cmt. 4 ("Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all."); *id.* at RJC 3.1 ("A judge may engage in personal or extrajudicial activities, except as prohibited by law or this Code. However, when engaging in such activities, a judge shall not: . . . participate in activities that will lead to frequent disqualification of the judge [or] participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.").

DISCUSSION

I. Calculation of the Sentencing Guidelines

Moreland entered into a plea agreement under Rule 11(c)(1)(B) in which the parties agreed to recommend to the Court a total offense level, after acceptance of responsibility, of 21. (DE# 63, Plea Agreement, ¶ 13(b).) When combined with a Criminal History Category of I, this yields an advisory guidelines range of 37-46 months. The PSR calculates the guidelines somewhat differently, however, and finds an applicable total offense level of 20, which yields an advisory range of 33-41 months. (PSR ¶ 130.) The government will separately file a sentencing position laying out its objections to the PSR.

II. 18 U.S.C. § 3553(a) factors

Although the Court is required to calculate the guidelines accurately and consider the advisory range, its ultimate obligation is to "impose a sentence sufficient, but not greater than necessary, to comply with" the goals of sentencing, as set forth in 18 U.S.C. § 3553(a). Regardless of whether the applicable offense level ends up being 20 or 21, consideration of the § 3553(a) factors demonstrates that this is an extraordinary case warranting an upward variance.[12]

A. Nature and Circumstances of the Offense and History and Characteristics of the Defendant

To fully appreciate the seriousness of the offense, it is worth emphasizing four facts. First, the offense involves corruption by an elected public official. An offense of this nature is exceptionally serious, since "[t]he corruption of elected officials undermines public confidence in our democratic institutions." *United States v. Rosen*, 716 F.3d 691, 694 (2d Cir. 2013) *abrogated*

[12] The plea agreement states, "Each party is free to recommend whatever sentence it deems appropriate." (DE# 63, Plea Agreement, ¶ 14.)

on other grounds by McDonnell v. United States, 136 S. Ct. 2355 (2016). Indeed, "[a] democratic government cannot function when those occupying the most elevated offices act to benefit themselves rather than the citizenry for which they work and to which they owe their highest loyalty." *United States v. Morgan*, 635 F. App'x 423, 469 (10th Cir. 2015) (Holmes, J., concurring). And the offense was not committed by just any public official. It was committed by a sitting judge. In our system of justice, judges are—and should be—held to the highest standards of honesty, professionalism, and integrity. They are entrusted with ensuring that all other actors in the justice system follow the law and play by the rules. As the Tennessee Code of Judicial Conduct rightly notes, "[t]he United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law." TENN. SUP. CT. R. 10, Preamble. As the Code further notes, "[p]ublic confidence in the judiciary is eroded" even by the mere *appearance* of impropriety. *Id.*, Rule 1.2, Comment 1. It is difficult to imagine a bigger threat to public confidence in the judiciary than a case like this one, where a judge uses his position of power to steal money from a non-profit, obtain special treatment for his friends and lovers, destroy evidence, and tamper with witnesses.

Second, the offense involves obstruction of justice. An offense of this nature is also exceptionally serious, since crimes of this sort "are offenses against the integrity of the judicial system." *United States v. Burge*, 711 F.3d 803, 811-12 (7th Cir. 2013). As such, schemes to obstruct justice must be taken seriously even when they are ultimately unsuccessful. "The purpose of punishing obstruction of justice is not just to prevent miscarriages of justice but also to reduce

the burden on the justice system." *United States v. Buckley*, 193 F.3d 708, 710 (7th Cir. 1999). Thus, "[i]f a defendant throws a monkey wrench into it the system is damaged even if the only cost is that of removing the monkey wrench before it can wreck the system." *Id.*

Third, the offense was not an aberration or a one-time lapse in judgment, but instead involved numerous illegal or improper acts, directed at different people, over a long period of time. Indeed, just focusing on obstruction alone, Moreland engaged in *four* separate schemes over a period of almost a year: (1) a scheme to bribe Person 1 to sign a false affidavit; (2) a scheme to plant drugs on Person 1 to frame her for a crime she did not commit; (3) a scheme to have N.C. destroy sensitive documents relating to cash collected from self-pay clients; and (4) a scheme to persuade N.C. to testify falsely and withhold evidence in front of the grand jury. Moreover, Moreland's improper relationship with Person 2 dates back to 2013, and his unethical trips abroad with attorneys date back to 2012. As such, he cannot plausibly claim that his conduct represents some sort of aberration that can now be brushed aside.

Fourth, in committing the offense, Moreland demonstrated a cavalier willingness to harm others. As noted, public corruption and obstruction of justice are never truly victimless crimes, since they strike at our system of democratic self-governance and the rule of law. But here Moreland's conduct also included a willingness to harm specific entities and individuals in order to enrich or protect himself. This includes his willingness to pocket money that should rightfully have gone to a non-profit dedicated to providing treatment services to people struggling with alcohol and substance abuse. It also includes his willingness to frame Person 1 for a crime she did not commit and to enlist both N.C. and J.P. in his criminal activities. To be sure, N.C. and J.P. are responsible for their own conduct, and they have pleaded guilty to serious felonies as a result of

their behavior. But it is highly unlikely that either of them would have committed those felonies absent Moreland's requests and direction. In that regard, their criminal liability is another collateral harm of Moreland's actions.

Any one of these four considerations, standing alone, would make this a serious offense. When taken together, these considerations show that this is a case of exceptional gravity.

B. The Need for Deterrence

This case also exemplifies the importance of both general and specific deterrence. *See* 18 U.S.C. § 3553(a)(2)(B). In particular, imposing a significant prison sentence for Moreland would serve the purpose of deterring other public officials from engaging in similar misconduct. A key objective of sentencing corrupt public officials in particular should be "to send a message to other [public officials] that [corruption] is a serious crime that carries with it a correspondingly serious punishment." *United States v. Kuhlman*, 711 F.3d 1321, 1328 (11th Cir. 2013); *see also Morgan*, 635 F. App'x at 450 (majority op.) (noting that "[d]eterrence is a crucial factor in sentencing decisions for economic and public corruption crimes such as this one").

General deterrence is particularly effective in cases like this one, because economic and public corruption crimes are "more rational, cool, and calculated than sudden crimes of passion or opportunity." *United States v. Peppel*, 707 F.3d 627, 637 (6th Cir. 2013) (internal quotations omitted). As one court has explained:

> We need not resign ourselves to the fact that corruption exists in government. Unlike some criminal justice issues, the crime of public corruption can be deterred by significant penalties that hold all offenders properly accountable. The only way to protect the public from the ongoing problem of public corruption and to promote respect for the rule of law is to impose strict penalties on all defendants who engage in such conduct, many of whom have specialized legal training or experiences. Public corruption demoralizes and unfairly stigmatizes the dedicated work of honest public servants. It undermines the essential confidence in our democracy

> and must be deterred if our country and district is ever to achieve the point where the rule of law applies to all—not only to the average citizen, but to all elected and appointed officials.

United States v. Spano, 411 F. Supp. 2d 923, 940 (N.D. Ill. 2006) (Castillo, J.).

Moreover, a significant sentence would send an important message to the public. "This country depends on honest representative democracy and, while our system is imperfect, it does not generally suffer from widespread corruption." *Morgan*, 635 F. App'x at 450. "Its proper functioning requires elected officials to serve the common good, not illicit personal gain." *Id.* "Our citizens place faith in the honesty and integrity of elected officials. Without meaningful consequences for a breach of trust, their trust is no more than blind trust." *Id.* Thus, a significant sentence can help assure the public that any breach of the trust it places in its elected officials will be punished appropriately.

A significant sentence will also assure the public that "white collar criminals will not be dealt with less harshly than are those criminals who have neither the wit nor the position to commit crimes other than those of violence." *United States v. Brennan*, 629 F. Supp. 283, 302 (E.D.N.Y. 1986); *see also United States v. Davis*, 537 F.3d 611, 617 (6th Cir. 2008) (noting that "[o]ne of the central reasons for creating the sentencing guidelines was to ensure stiffer penalties for white-collar crimes and to eliminate disparities between white-collar sentences and sentences for other crimes").

Finally, a significant sentence will send a message—both to potential witnesses and those who would seek to tamper with them—that courts will protect those who are willing put themselves at risk by coming forward with evidence about criminal activity. "There are certain components in the justice system without which it could not function." *United States v. Calvert*,

511 F.3d 1237, 1241 (9th Cir. 2008). "Witnesses are among these essential components," as they frequently serve as "the engine" that drives the justice system. *Id.* "Without their information, and their willingness to take the very public and visible role of furnishing sworn testimony at trial, our criminal justice system could not function." *Id.* "The ability of law enforcement officers and prosecutors to discover and prove criminal activity turns on their ability to recruit witnesses willing to truthfully testify in a public court of law." *Id.* Indeed, "[w]ithout a witness'[s] willingness to come forward there would rarely, if ever, be a discrete judicial proceeding to conduct in the first instance." *Id.* at 1242.

Whenever a witness has information about criminal activity—and particularly about criminal activity committed by a person in power—he or she will naturally fear the possibility of retribution. It is paramount that witnesses feel assured that any such attempts at retribution will be seen as "pernicious" attacks on "a vital organ to the functioning of the justice system" and treated accordingly. *Id.* Otherwise, obstructive acts like Moreland's may "dissuade[] others from cooperating with authorities in general." *Id.* Likewise, a person under investigation may be tempted to bribe, discredit, or otherwise tamper with a key witness, in the hopes that it will fatally undermine the investigation into his conduct. A clear message must be sent that such attempts at tampering will not redound to a defendant's advantage, but will instead make things significantly worse.

In addition, a lengthy sentence is necessary for purposes of specific deterrence as to Moreland. It is true that Moreland's conviction ensures that he will no longer be an elected judge. But the facts of this case show that Moreland has operated for years under the belief that the rules do not apply to him. Not only did he enrich himself and provide favorable treatment to litigants

who appeared before him, he took numerous steps to destroy evidence and tamper with witnesses after learning that his conduct was being investigated. Perhaps most significantly, his willingness to obstruct justice continued *even after* he was arrested and nearly detained on federal obstruction charges. Given that Moreland was undeterred by the Court's prior order to avoid all contact with potential witnesses, it is hard to feel confident that he will never reoffend if presented with the opportunity. "The fact that a defendant having done everything he could to obstruct justice runs out of tricks, throws in the towel, and pleads guilty does not make him a prime candidate for rehabilitation." *Buckley*, 193 F.3d at 711.

C. The Need to Avoid Unwarranted Sentence Disparities

Imposing an above-guidelines sentence in this case would not result in unwarranted disparities with any other defendants. After all, § 3553(a)(6) is concerned with "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." It follows that "sentencing disparities are not unwarranted where defendants are not similarly situated." *United States v. Garcia*, 459 F. App'x 68, 69 (2d Cir. 2012); *see also United States v. Ruiz*, 403 F. App'x 48, 55 (6th Cir. 2010). "Sentencing disparities can exist for many valid reasons, including giving lower sentences to individuals that cooperate with investigations and giving higher sentences to individuals for whom the Guidelines do not adequately account for their criminal history" or their criminal conduct. *United States v. Hernandez-Fierros*, 453 F.3d 309, 313-14 (6th Cir. 2006). Given the scope and character of Moreland's crimes, it is difficult to find other defendants who are truly similarly situated to him. It is worth noting, however, that in two other cases involving former judges convicted on roughly comparable facts, the courts imposed sentences of 60 and 63 months. *See United States v. Boeckmann*, Case No. 4:16-cr-00232-

KGB (E.D. Ark. Feb. 23, 2018) (imposing 60-month sentence)[13]; *United States v. Terry*, 707 F.3d 607 (6th Cir. 2013) (affirming 63-month sentence).[14] As such, a 60-month sentence in this case would not produce any unwarranted sentence disparities.

That a 60-month sentence would require an upward variance does not change the result. Indeed, district judges are prohibited from treating the applicable guideline range as presumptively reasonable, and are instead required to "make an individualized assessment based on the facts presented" and impose a non-guidelines sentence if one is warranted. *See Gall v. United States*, 552 U.S. 38, 49-50 (2007). Where, as here, the facts of a specific case make it more serious than the "mine run" of cases under the guidelines, an upward variance is appropriate. *See, e.g.*, *United States v. Vowell*, 516 F.3d 503 (6th Cir. 2008) (affirming upward variance of 480 months, more than doubling the top of the applicable guideline range); *United States v. Stewart*, 628 F.3d 246 (6th Cir. 2010) (affirming upward variance of 340 months, more than tripling the top of the applicable guideline range); *United States v. Heard*, -- F. App'x --, 2018 WL 4339892 (6th Cir. Sep. 11, 2018) (affirming upward variance of 63 months, more than doubling the top of the applicable guideline range).

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[13] *See also* Christine Hauser, *Former Judge in Arkansas Receives 5 Years for Coercing Sexual Acts from Defendants*, N.Y. TIMES, Feb. 22, 2018.

[14] *See also* James F. McCarty, *Ex-Cuyahoga County Judge Steven Terry Perjured Himself, Sentenced to 5 Years, 3 Months in Prison*, THE PLAIN DEALER, Oct. 4, 2011 (noting Judge Lioi's comment at sentencing, "Being a judge is such a special privilege that his conduct shakes the core of our system of justice in this country").

CONCLUSION

Moreland was not only an elected public official, but a judge—a position that should be held to the highest standards of ethical, moral, and lawful behavior. His criminal conduct threatened not only the public's confidence in those elected to hold public office, but also its confidence in the integrity of our judicial system. Given the duration, breadth, and egregiousness of his conduct, Moreland should receive an above-guidelines sentence of 60 months' imprisonment.

Respectfully submitted,

ANNALOU TIROL
Acting Chief, Public Integrity Section
Criminal Division
United States Department of Justice

s/ Lauren Bell
LAUREN BELL
Trial Attorney, Public Integrity Section
Criminal Division
United States Department of Justice

DONALD Q. COCHRAN
United States Attorney
Middle District of Tennessee

s/ Cecil VanDevender
CECIL W. VANDEVENDER
Assistant United States Attorney
Middle District of Tennessee

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served via the Court's electronic filing system on November 21, 2018, to the following:

Peter J. Strianse
UBS Tower, Suite 1700
315 Deaderick Street
Nashville, TN 37238
Attorney for Cason Moreland

s/ Cecil VanDevender
CECIL VANDEVENDER